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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,358	03/03/2004	Charles L. Branch	MSDI-90/PC689.02	4260

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KRIEG DEVAULT LLP
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INDIANAPOLIS, IN 46204-2709

EXAMINER

PHILOGENE, PEDRO

ART UNIT	PAPER NUMBER
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3733

MAIL DATE	DELIVERY MODE
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06/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/792,358

Applicant(s)

BRANCH ET AL.

Examiner

Pedro Philogene

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2007.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 7-16 and 26-51 is/are allowed.
6) ☒ Claim(s) 1-6, 17-19, 21 and 23-25 is/are rejected.
7) ☒ Claim(s) 20 and 22 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 4/16/07.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/16/07 has been entered.

Priority

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application). The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

The disclosure of the prior-filed application, Application No. 10/180,658 filed 6/26/02 now Patent # 6,945,933, fails to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application. The subject matter of this application was first presented for examination on 3/3/04, therefore, the priority date accorded to this application is the filing date of 3/3/04.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 17,21,23,24,25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grieshaber (2,693,795) in view of Healy (4,380,999).

With respect to claim 1, Grieshaber discloses a retractor assembly comprising a first retractor portion (31) having a proximal end and a distal end and being positionable in an incision; a second retractor portion (39) having a proximal end and a distal end and being positionable in the incision opposite the first retractor portion, the first and second retractor portions defining an axis extending there between; a separation instrument (10) coupled between the proximal ends of the first and second retractor portions and being offset to one side of the axis; as best seen in FIG.1, the separation instrument being operable to move the first and second retractor portions along the axis from an insertion configuration wherein the first and second retractor portions are adjacent one another to a second configuration wherein the first and second portions are separated from one another; and an intermediate retractor assembly (13) removably mountable to the separation instrument, the intermediate retractor assembly including a linking arm (46) extending from the separation instrument toward the first and second retractor portions to a retractor blade (64), the retractor blade being transversely oriented to the linking arm and being positionable in the incision between the first and second retractor portions when the linking arm is mounted to the separation instrument

and the first and second retractor portions are in the second configuration.; as set forth in column 2, lines 20-80, column 3, lines 1-85, column 4, lines 173; and as best seen in FIGS.1-9.

With respect to claims 6,17,18,21,23-25, Grieshaber discloses all the limitations; as set forth in column 2, lines 20-80, column 3, lines 1-85, column 4, lines 173; and as best seen in FIGS.1-9.

It is noted that Grieshaber did not teach of a linking arm including a hook portion; as claimed by applicant. However, in a similar art, Healy evidences the use of retractor having a linking arm including a hook portion for engaging or hooking a separation instrument.

Therefore, given the teaching of Healy, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Grieshaber, as taught by Healy to engage or hook a separation instrument.

Claims 18,19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grieshaber (2,693,795) in view of Healy (4,380,999) in view of Koros et al. (6,139,493)

With respect to claims 18,19, it is noted that the above combination of references did not teach of intermediate third and fourth retractor portions; as claimed by applicant. However, in a similar art, Koros et al evidences the use of a third and fourth retractor portions to provide a clearer or greater view of the operating site.

Therefore, given the teaching of Koros, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of

Grieshaber/Healy, as taught by Koros et al to provide a clearer or greater view of the operating site.

Allowable Subject Matter

Claims 20,22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 7-16,26-51 are allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6,196,969

3-2001

Bester et al.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene
June 14, 2007


PEDRO PHILOGENE
PRIMARY EXAMINER